

interest in the class which the employee represents. Nonvoting representative members of Food and Drug Administration advisory committees are described in 21 CFR 14.80(b)(2), 14.84, 14.86, and 14.95(a).

Example 1: The FDA's Medical Devices Advisory Committee is established pursuant to 21 U.S.C. 360c(b), which requires that each panel of the Committee include one nonvoting industry representative and one nonvoting consumer representative. An industry representative on the Ophthalmic Devices Panel of this Committee has been appointed as a special Government employee, in accordance with the procedures described at 14 CFR 14.84. The special Government employee may participate in Panel discussions concerning the premarket approval application for a silicone posterior chamber intraocular lens manufactured by MedInc, even though she is employed by, and owns stock in, another company that manufactures a competing product. However, a consumer representative who serves as a special Government employee on the same Panel may not participate in Panel discussions if he owns \$30,000 worth of stock in MedInc unless he first obtains an individual waiver under 18 U.S.C. 208 (b)(1) or (b)(3).

(k) *Employees of the Tennessee Valley Authority.* An employee of the Tennessee Valley Authority (TVA) may participate in developing or approving rate schedules or similar matters affecting the general cost of electric power sold by TVA, if the disqualifying financial interest arises from use of such power by the employee or by any other person specified in section 208(a).

[61 FR 66841, Dec. 18, 1996 as amended at 62 FR 23128, Apr. 29, 1997]

§ 2640.204 Prohibited financial interests.

None of the exemptions set forth in §§ 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee, his spouse, or minor child in violation of a statute or agency supplemental regulation issued in accordance with 5 CFR 2635.105, or that is otherwise prohibited under 5 CFR 2635.403(b).

Example 1: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at \$2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the

ownership of no more than \$5,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

§ 2640.205 Employee responsibility.

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in §§ 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether an exemption is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

§ 2640.206 Existing agency exemptions.

An employee who, prior to January 17, 1997, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

Subpart C—Individual Waivers

§ 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).

(a) *Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1).* Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

(1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing